IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10138 OF 2004

Harishchandra Sitaram Vartak & Ors. ...Petitioners

Versus

Vimal Nathu Malekar ...Respondent

.....

Mrs. Teja Katdane & Miss. Alpa Javeri counsel for Petitioners

.....

CORAM: B. H. MARLAPALLE, J.

DATED: 1ST FEBRUARY, 2005

P.C.:-

1. Heard Mrs. Alpa Javeri the learned counsel for the petitioners who were defendants in Regular Civil Suit No. 5 of 2000 which has been filed for permanent injunction. Admittedly, the suit property belonged to late Shri. Janardan Balu Povalekar and the plaintiff had raised the claim over the same property on the basis of the Will allegedly executed by him on or about 6.1.1991. The defendants by a written statement opposed the suit as well as the application for temporary injunction. Two witnesses were examined on 5.10.2004, 18.10.2004 and 22.11.2004 by the plaintiff. It appears that on 22.11.2004 an application at Exh.115 came to be filed by the plaintiff praying for leave to examine P.K. Limaye,

the learned advocate who was appearing for the plaintiff herself and ostensibly for the reason that the two witnesses viz. Santosh Laxman Mhatre and Nandkumar Balaram Mhatre had not supported her case. The said application was opposed by the defendants by filing their say and in addition on the same day i.e. on 22.11.2004 they also moved another application at Exh.116 seeking an order that the plaintiff had no right to examine Advocate Limaye, as her witness. Both these applications were heard and decided by a common order dated 6.12.2004 by the learned C.J.S.D. at Raigad. The application at Exh.116 has been rejected whereas the application at Exh.115 was allowed and hence, this petition by the defendants.

2. Admittedly, before the impugned order dated 6.12.2004 was passed, Advocate Limaye filed pursis at Exh.118 on 23.11.2004 i.e. on the very next day when the applications at Exh.115 and Exh.116 was submitted and withdrew his vakalatnama. Reliance was placed on the provisions of Rule 13 of the Bar Council of Maharashtra and Goa Enrollment Rules as well as the Rule 34 and 35 of the said Rules. The trial Court noted that it is the discretion of the Court in the given case to examine the advocate appearing for a particular party and on the facts of this case it further held that the plaintiff had made out a case to exercise the said discretion in her favour. The

view taken by the trial Court cannot be termed as grossly erroneous or perverse and the impugned order does not in any way take away the rights of the defendants to cross examine the said witness.

3. Hence, the petition is rejected summarily.